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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181755
Party	Defendant BeauxKat Enterprises LLC
Correspondence Address	Justin D Park Romero Park & Wiggins 155 - 108th Avenue NE, Suite 202 Bellevue, WA 98004 UNITED STATES jpark@rpwfir.com
Submission	Defendant's Notice of Reliance
Filer's Name	Justin D. Park
Filer's e-mail	jpark@rpwfir.com
Signature	/Justin D. Park/
Date	08/10/2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRANCISCAN VINEYARDS)	
)	Mark: BLACK RAVEN BREWING COMPANY
Opposer)	Opposition No.: 91181755
v.)	Serial No.: 77223446
)	
BEAUXKAT ENTERPRISES LLC)	
)	
Applicant)	
)	

APPLICANT'S FIRST NOTICE OF RELIANCE

TO: Franciscan Vineyards

AND TO: Linda Kurth, attorney for Opposer.

Please take notice that Applicant, Beauxkat Enterprises, LLC ("Applicant"), pursuant to 37 CFR §2.120(j) is hereby noticing its reliance on the following:

1. Opposer's responses to Applicant's first Set of Interrogatories, dated August 27, 2008. These responses are generally relevant in that they describe the marks and use of said marks of the Opposer and other aspects of the Opposer's marks in question.
2. Opposer's written responses to Applicant's Request for the Production of Documents, dated August 27, 2008. These written responses contain statements by Opposer as to the nature of its business, trade and distributions channels, as well as its use of its marks.

DATED this 10th day of August, 2009.

ROMERO PARK & WIGGINS P.S.

/Justin D. Park/
Justin D. Park, WSBA #28340
155 – 108th Avenue NE, Suite 202
Bellevue, WA 98004
(425) 450-5000 telephone
(425) 450-0728 facsimile
jpark@rpwfir.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's First Notice of Reliance was forwarded by first class, postage pre-paid mail by depositing the same with the U.S. Postal Service on this 10th day of August, 2009 to the Opposer at the following address:

Stephen L. Baker
Linda Kurth
Baker & Rannells
575 Route 28, Suite 102
Raritan, NJ 08869

A copy of the same was sent via e-mail on this 10th day of August, 2009 to the Opposer at the following e-mail addresses:

officeactions@br-tmlaw.com
k.hnasko@br-tmlaw.com
n.friedman@br-tmlaw.com
l.kurth@br-tmlaw.com
s.baker@br-tmlaw.com

ROMERO PARK & WIGGINS P.S.

/Diana Sanders/_____
Diana Sanders, Legal Assistant
155 – 108th Avenue NE, Suite 202
Bellevue, WA 98004
(425) 450-5000 telephone
(425) 450-0728 facsimile
dsanders@rpwfir.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



FRANCISCAN VINEYARDS, INC.,

Opposition No. 91181755

Opposer,

Mark: BLACK RAVEN BREWING
COMPANY

v.

Serial No. 77223446

BEAUXKAT ENTERPRISES, LLC

Filed: January 8, 2008

Applicant.

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Opposer, Franciscan Vineyards, Inc., further responds to the First Set of Interrogatories served by Applicant BeauxKat Enterprises, Inc. ("Applicant") as follows:

Preliminary Statement

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Opposer at the present state of this proceeding. Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

General Objections

1. The following general objections are incorporated by reference in Opposer's response to each and every Interrogatory below.

2. The specific responses set forth below are for the purposes of discovery only, and Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it

may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

3. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertences.

4. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Interrogatories, and Opposer reserves its right to amend or to supplement its responses in the event Applicant asserts an interpretation that differs from Opposer's interpretation.

5. By making these responses, Opposer does not concede it is in possession of any information responsive to any particular Interrogatory or Document Request or that any response given is relevant to this action.

6. Subject to and without waiving the general and specific responses and objections set forth herein, Opposer will provide herewith information that Opposer has located and reviewed to date. Opposer will continue to provide responsive information as such is discovered. Opposer's failure to object to a particular Interrogatory, Document Request or willingness to provide responsive information pursuant to an Interrogatory or Document Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

7. Because Opposer may not have discovered all the information that is possibly within the scope of the Interrogatories, Opposer expressly reserves its right to amend or to

supplement these Responses and Objections with any additional information that emerges through discovery or otherwise.

8. Opposer objects to the Interrogatories and Document Requests to the extent that they require the disclosure of information or the production of documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Opposer responds to the Interrogatories and Document Requests on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Opposer's right to assert such privilege, rule or doctrine and the Opposer may withdraw any such response inadvertently made as soon as identified.

9. Opposer objects to the Interrogatories and Document Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Interrogatories and Document Requests on the condition that the inadvertent responses regarding any proprietary, sensitive or confidential information does not waive any of Opposer's rights and that Opposer may withdraw any such response inadvertently made as soon as identified.

10. Opposer objects to the Interrogatories and Document Requests to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

11. Opposer objects to the Interrogatories and Document Requests to the extent that they are vague, ambiguous, or overbroad and therefore not susceptible to a response as propounded. To the extent that any request for documents requires Opposer to produce a

sample of each different document used for any particular category, or to produce “all documents”, Opposer objects to the same as being overly broad, overly burdensome, and beyond what is required of Opposer under the applicable rules. Accordingly, to the extent that Opposer agrees to produce documents in response to any such requests, such production shall be limited to representative documents.

12. Opposer objects to the Interrogatories to the extent that they exceed the requirements of the Federal Rules of Civil Procedure of the Trademark Rules of Practice.

13. Opposer objects to the Interrogatories and Document Requests to the extent that they require Opposer to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information from other sources are equally available to Applicant.

14. Opposer objects to the Interrogatories and Document Requests to the extent that they require Opposer to undertake such an extensive review that such Interrogatories and Document Requests are unduly burdensome and harassing.

15. Opposer objects to the Interrogatories to the extent that Applicant seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

16. Opposer objects to these Requests to the extent that they are not limited to use and registration of the marks in issue in the United States.

17. Opposer objects to the definition of “Identify” when used with reference to natural persons as being overly broad. Where natural persons are identified, they will be identified with sufficient information (if known) to enable Applicant to locate and contact such persons.

18. Opposer objects to the definition of “Identify” when used with reference to documents, as being overly broad. Where documents are identified, they will be identified with sufficient specificity to enable Applicant to request the same pursuant to a request for documents.

19. Opposer objects to the definition of “Opposer” to the extent it includes “predecessors”, “directors”, “officers”, “agents”, “employees”, “agents”, and “attorneys”. Opposer is under no obligation to serve each of the persons/entities referred to in the definition and Opposer is only obligated to produce information and documents under its possession or control.

20. Opposer objects to the definition of “Applicant” to the extent it includes “predecessors”, “directors”, “officers”, “agents”, “employees”, “agents”, and “attorneys”. Without such persons or entities being specifically identified to Opposer, the definition is incomprehensible. Opposer is under no obligation to investigate the identities of each such persons or entities prior to responding to the interrogatories.

INTERROGATORIES

Interrogatory No. 1: Please state the name, title and address for each person providing any information used in answering these Interrogatories and Requests for Production of Documents. For each person identified, please state the Interrogatory and/or Request for Production of Document number for which that person provided information or an answer.

Response: As to all interrogatories and requests for documents:

Stephanie Jackel
Marketing Director for Ravenswood wines
1265 Battery
San Francisco, California

Interrogatory No. 2: Please state the name, address and telephone number of each witness you may call at trial.

Response: Opposer objects to Interrogatory No. 2 as this request violates, in part, the attorney work-product privilege. In any event, Opposer has not yet determined who, if anyone, it may call at trial.

Interrogatory No. 3: State the name, address, and phone number of each and every person known to you or your attorneys to have personal knowledge regarding the subject matter of this lawsuit, and provide a brief summary of what each person knows.

Response: This Interrogatory is objected to as being vague and ambiguous as to the term “what each person knows.” The person identified below has knowledge regarding Opposer’s Marks and the facts on which the Opposition is based. Without waiver of the foregoing objection:

Stephanie Jackel
[same address]
415-912-3700

Interrogatory No. 4: State the name, address, and phone number of each individual who may be called to testify as an expert witness in this case and provide a summary of his or her anticipated testimony.

Response: At the present time, none identified.

Interrogatory No. 5: Describe by common commercial name, each product that is intended to be sold or offered for sale in the United States under Opposer’s Marks. For any wines listed, please include information regarding name, grape varietals, dates produced, quantity produced, and location produced.

Response: Interrogatory No. 5 is objected to as being overly broad and unduly burdensome to comply with. Without waiver of any comment or objection, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes to make wine in 1976. Its first release of a wine bearing Opposer’s Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer’s Marks was on or about February 29, 1980. Opposer’s sales of wine bearing Opposer’s Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future. Opposer uses and has used Opposer’s Marks on a large variety of wines, including without limitation Zinfandel, Merlot, Chardonnay, Carignane, Alicante Bouschet, Petit Sirah, Cabernet Sauvignon, Mataro, Grenache, Cabernet Franc, Muscat, and Gewurztraminer. Vineyard Designates include without limitation: Barrica, Belloni, Big River, Dickerson, Gregory, Old Hill, Pickberry, Rancho Salina, Sangiacomo, and Teldischi. Grape varietals include, but are not limited to:

The Ravenswood winery has been known as Ravenswood Winery since 1976. Opposer uses, *inter alia*, the marks and names RAVENSWOOD, RAVENS WOOD and RAGIN RAVEN. Opposer owns the following U.S. trademark registrations:

Reg. No. 2,118,152 for the mark RAVENWOOD for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,118,153 for the Design Mark of Three Black Ravens in a Circle for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,130,653 for the Design Mark of Three Black Ravens in a Circle for wine, which was granted on January 20, 1998.

Reg. No. 2,132,719 for the Mark RAVENSWOOD for wine, which was granted on January 27, 1998.

Reg. No. 2,888,963 for the mark RAVENS for wine, which was granted on September 28, 2004.

Reg. No. 3,134,833 for the mark RAVENS for clothing, namely aprons, shirts, T-shirts, and jackets, which was granted on August 29, 2006.

Reg. No. 3,153,731 for the Mark RAGIN' RAVEN for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat, which was granted on October 10, 2006.

Reg. No. 3,336,587 for the Mark RAGIN' RAVEN for wine, which was granted on November 13, 2007.

Reg. No. 3,457,923 for the Mark RAVENS WOOD for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat which was granted on July 1, 2008.

The Ravenswood on-premises tasting room was opened in February of 1991 and has continually been open every week since then through the present date.

RAVENSWOOD branded merchandise, other than wine, has been sold at the Ravenswood visitor center/wine tasting room since the early 1980's. RAVENSWOOD branded merchandise includes (by way of example only) t-shirts, sweatshirts, polo shirts, bike shirts, baseball type caps, fleece jackets, denim jackets, silk scarves, watches, bumper stickers, Christmas tree ornaments, pepper grinders, totes, coasters, aprons, hand towels, pottery, glassware, etc. Opposer also sells food products at its Visitor Center, including without limitation, nuts, olive oil, barbeque sauces, tomato sauces, etc.

First Use dates/continuity/current use:

Aprons:	On or about June 30, 1990 –continuous and current
Bandanas:	On or about June 30, 1990–continuous and current
Caps and hats:	On or about June 30, 1990–continuous and current
Gym shorts:	On or about June 30, 1990–continuous and current
Jean jackets:	On or about June 30, 1990–continuous and current
Polo shirts:	On or about June 30, 1990–continuous and current
Tank tops:	On or about June 30, 1990–continuous and current
T-shirts:	On or about June 30, 1990–continuous and current
Sweatshirts:	On or about June 30, 1990–continuous and current

With regard to quantities produced, please see responsive documents.

Interrogatory No. 6: Identify all manufacturers, suppliers, wholesalers, distributors, retailers and/or licensees who have any part in the manufacture, packaging, delivery, sale or distribution of products using Opposer's Marks.

Response: Interrogatory No. 6 is objected to as being overly broad and unduly burdensome to comply with, and is further irrelevant as it relates to its commerce outside of the United States. Without waiver of any comment or objection, Opposer states:

Opposer has been in business for over 25 years. Opposer produces and packages its wines at its Ravenswood Winery, and first began crushing grapes for wine in 1976. Opposer sells its wines to its distributors who in turn sell the wines to retail liquor stores, convenience stores, grocery stores, restaurants, bars and the like across the United States. Opposer also sells its wines on-premise and through its wine club. For a list of Opposer's distributors in the United States, please see responsive documents.

The Ravenswood on-site tasting room was opened in February, 1990 and has continually been open every week since then through the present date. Opposer's wines are advertised and promoted at its website (www.ravenswood.com), trade events/shows, wine clubs, community charitable functions, wine pouring and tasting competitions, through point of sale retail materials and tourist publications such as *California Visitor Review* and *AAA tour guide*.

Interrogatory No. 7: If any products bearing any of Opposer's Marks have ever been presented for sale or otherwise been in attendance at either the GABF (Great American Beer Festival) or at the CBC/WBC (Craft Brewers Conference/World Beer Cup) please identify the location and date of such presentation.

Response: At the present time, none identified.

Interrogatory No. 8: Identify all facts that support the allegations in paragraph 10 of Opposer's Notice of Opposition.

Response: Opposer objects to Interrogatory No. 8 as being, in part, violative of the attorney work product privilege. Opposer has not yet determined “all facts that support the allegations in paragraph 10 of Opposer’s Notice of Opposition,” and is under no obligation to provide such information. Additionally, the facts that support the allegation that “The registration of the mark BLACK RAVEN BREWING COMPANY to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant’s goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer’s irreparable damage,” are myriad and the request is overly broad and unduly burdensome to comply with. Further, many of the facts concerning the relatedness of the parties’ respective goods involve attorney-work product and are therefore privileged. Accordingly, and without waiver of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes for wine in 1976. Its first release of a wine bearing Opposer’s Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer’s Marks was on or about February 29, 1980. Opposer’s sales of wine bearing Opposer’s Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future.

The Ravenswood winery has been known as Ravenswood Winery since 1976. Ravenswood has maintained a website continuously from 1996 to the present date. Opposer uses, *inter alia*, the marks and names RAVENS, RAVENSWOOD, RAVENS WOOD and RAGIN RAVEN. Opposer owns the following U.S. trademark registrations:

Reg. No. 2,118,152 for the mark RAVENWOOD for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,118,153 for the Design Mark of Three Black Ravens in a Circle for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,130,653 for the Design Mark of Three Black Ravens in a Circle for wine, which was granted on January 20, 1998.

Reg. No. 2,132,719 for the Mark RAVENSWOOD for wine, which was granted on January 27, 1998.

Reg. No. 2,888,963 for the mark RAVENS for wine, which was granted on September 28, 2004.

Reg. No. 3,134,833 for the mark RAVENS for clothing, namely aprons, shirts, T-shirts, and jackets, which was granted on August 29, 2006.

Reg. No. 3,153,731 for the Mark RAGIN' RAVEN for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat, which was granted on October 10, 2006.

Reg. No. 3,336,587 for the Mark RAGIN' RAVEN for wine, which was granted on November 13, 2007.

Reg. No. 3,457,923 for the Mark RAVENS WOOD for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat which was granted on July 1, 2008.

The Ravenswood on-premises tasting room was opened in February of 1991 and has continually been open every week since then through the present date.

RAVENSWOOD branded merchandise, other than wine, has been sold at the Ravenswood visitor center/wine tasting room since the early 1980's. RAVENSWOOD branded merchandise includes (by way of example only) t-shirts, sweatshirts, polo shirts, bike shirts, baseball type caps, fleece jackets, denim jackets, silk scarves, watches, bumper stickers, Christmas tree ornaments, pepper grinders, totes, coasters, aprons, hand towels, pottery, glassware, etc. Opposer also sells food products at its Visitor Center, including without limitation, nuts, olive oil, barbeque sauces, tomato sauces, etc.

First Use dates/continuity/current use:

Aprons:	On or about June 30, 1990 –continuous and current
Bandanas:	On or about June 30, 1990–continuous and current
Caps and hats:	On or about June 30, 1990–continuous and current
Gym shorts:	On or about June 30, 1990–continuous and current
Jean jackets:	On or about June 30, 1990–continuous and current
Polo shirts:	On or about June 30, 1990–continuous and current
Tank tops:	On or about June 30, 1990–continuous and current
T-shirts:	On or about June 30, 1990–continuous and current
Sweatshirts:	On or about June 30, 1990–continuous and current

Opposer will also rely upon the relatedness of the parties' respective products. In that regard, Opposer intends to rely upon, *inter alia*, the facts that there are numerous third party registrations and uses of marks for both beer and wine, that beer and wine are advertised in the same publications, that beer and wine are distributed by the same persons, offered in the same establishments, and that beer and wine are often traditionally consumed together and offered together.

Further, Opposer assumes that the Board can take judicial notice that wine and beer are sold in the same establishments, including liquor stores, convenience stores, grocery stores, restaurants and the like.

Interrogatory No. 9: Identify all facts that support the allegations in paragraph 11 of Opposer's Notice of Opposition.

Response: Opposer objects to Interrogatory No.11 as being, in part, violative of the attorney work product privilege. Opposer has not yet determined "all facts that support the allegations in paragraph 11 of Opposer's Notice of Opposition," and is under no obligation to provide such information. Additionally, the facts that support the allegation that "Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant," are myriad and the request is overly broad and unduly burdensome to comply with. Further, many of the facts concerning the relatedness of the parties respective goods involve attorney-work product and are therefore privileged. Accordingly, and without wavier of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes to make wine in 1976. Its first release of a wine bearing Opposer's Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer's Marks was on or about February 29, 1980. Opposer's sales of wine bearing Opposer's Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future.

The Ravenswood winery has been known as Ravenswood Winery since 1976. Ravenswood has maintained a website continuously from 1996 to the present date. Opposer uses, *inter alia*, the marks and names RAVENSWOOD, RAVENS WOOD and RAGIN RAVEN. Opposer owns the following U.S. trademark registrations:

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RAVENSWOOD branded merchandise, other than wine, has been sold at the Ravenswood visitor center/wine tasting room since the early 1980's. RAVENSWOOD branded merchandise includes (by way of example only) t-shirts, sweatshirts, polo shirts, bike shirts, baseball type caps, fleece jackets, denim jackets, silk scarves, watches, bumper stickers, Christmas tree ornaments, pepper grinders, totes, coasters, aprons, hand towels, pottery, glassware, etc. Opposer also sells food products at its Visitor Center, including without limitation, nuts, olive oil, barbeque sauces, tomato sauces, etc.

First Use dates/continuity/current use:

Aprons:	On or about June 30, 1990—continuous and current
Bandanas:	On or about June 30, 1990—continuous and current
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Tank tops:	On or about June 30, 1990—continuous and current
T-shirts:	On or about June 30, 1990—continuous and current
Sweatshirts:	On or about June 30, 1990—continuous and current

Opposer will also rely upon the relatedness of the parties' respective products. In that regard, Opposer intends to rely upon, *inter alia*, the facts that there are numerous third party registrations and uses of marks for both beer and wine, that beer and wine are advertised in the same publications, that beer and wine are distributed by the same persons, offered in the same establishments, and that beer and wine are often traditionally consumed together and offered together.

Further, Opposer assumes that the Board can take judicial notice that wine and beer are sold in the same establishments, including liquor stores, convenience stores, grocery stores, restaurants and the like.

Interrogatory No. 10: Identify all facts that support the allegations in paragraph 3 of Opposer's Notice of Opposition.

Response: Opposer objects to Interrogatory No.3 as being, in part, violative of the attorney work product privilege. Opposer has not yet determined "all facts that support the allegations in paragraph 3 of Opposer's Notice of Opposition," and is under no obligation to provide such information. Additionally, the facts that support the allegation that "The relationship of Applicant's goods to those of Opposer is enhanced because Applicant's mark is BLACK RAVEN BREWING COMPANY for beer and BLACK RAVEN as applied to beer enhances the confusion where Opposer uses the design mark of Three Black Ravens and word marks RAVENS and RAGIN RAVENS for wine in class 33.", are myriad and the request is overly broad and unduly burdensome to comply with. Further, many of the facts concerning the relatedness of the parties respective goods involve attorney-work product and are therefore privileged. Accordingly, and without waiver of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes to make wine in 1976. Its first release of a wine bearing Opposer's Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer's Marks was on or about February 29, 1980. Opposer's sales of wine bearing Opposer's Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future.

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RAVENSWOOD branded merchandise, other than wine, has been sold at the Ravenswood visitor center/wine tasting room since the early 1980's. RAVENSWOOD branded merchandise includes (by way of example only) t-shirts, sweatshirts, polo shirts, bike shirts, baseball type caps, fleece jackets, denim jackets, silk scarves, watches, bumper stickers, Christmas tree ornaments, pepper grinders, totes, coasters, aprons, hand towels, pottery, glassware, etc. Opposer also sells food products at its Visitor Center, including without limitation, nuts, olive oil, barbeque sauces, tomato sauces, etc.

First Use dates/continuity/current use:

Aprons:	On or about June 30, 1990—continuous and current
Bandanas:	On or about June 30, 1990—continuous and current
Caps and hats:	On or about June 30, 1990—continuous and current
Gym shorts:	On or about June 30, 1990—continuous and current
Jean jackets:	On or about June 30, 1990—continuous and current
Polo shirts:	On or about June 30, 1990—continuous and current
Tank tops:	On or about June 30, 1990—continuous and current
T-shirts:	On or about June 30, 1990—continuous and current
Sweatshirts:	On or about June 30, 1990—continuous and current

Opposer will also rely upon the relatedness of the parties' respective products. In that regard, Opposer intends to rely upon, *inter alia*, the facts that there are numerous third party registrations and uses of marks for both beer and wine, that beer and wine are advertised in the same publications, that beer and wine are distributed by the same

persons, offered in the same establishments, and that beer and wine are often traditionally consumed together and offered together.

Further, Opposer assumes that the Board can take judicial notice that wine and beer are sold in the same establishments, including liquor stores, convenience stores, grocery stores, restaurants and the like.

Interrogatory No. 11: Identify all facts that support the allegations in paragraph 7 of Opposer's Notice of Opposition.

Response: Opposer objects to Interrogatory No.7 as being, in part, violative of the attorney work product privilege. Opposer has not yet determined "all facts that support the allegations in paragraph 7 of Opposer's Notice of Opposition," and is under no obligation to provide such information. Additionally, the facts that support the allegation that "The Opposer's Marks and Applicant's BLACK RAVEN BREWING COMPANY mark are confusingly similar when applied to the goods of the parties," are myriad and the request is overly broad and unduly burdensome to comply with. Further, many of the facts concerning the relatedness of the parties' respective goods involve attorney-work product and are therefore privileged. Accordingly, and without waiver of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes to make wine in 1976. Its first release of a wine bearing Opposer's Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer's Marks was on or about February 29, 1980. Opposer's sales of wine bearing Opposer's Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future.

The Ravenswood winery has been known as Ravenswood Winery since 1976. Ravenswood has maintained a website continuously from 1996 to the present date. Opposer uses, *inter alia*, the marks and names RAVENSWOOD, RAVENS WOOD and RAGIN RAVEN. Opposer owns the following U.S. trademark registrations:

Reg. No. 2,118,152 for the mark RAVENWOOD for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,118,153 for the Design Mark of Three Black Ravens in a Circle for clothing, namely aprons, bandanas, caps, gym shorts, hats, jeans, jackets, polo shirts, tank tops, T-shirts, and sweatshirts, which was granted on December 2, 1997.

Reg. No. 2,130,653 for the Design Mark of Three Black Ravens in a Circle for wine, which was granted on January 20, 1998.

Reg. No. 2,132,719 for the Mark RAVENSWOOD for wine, which was granted on January 27, 1998.

Reg. No. 2,888,963 for the mark RAVENS for wine, which was granted on September 28, 2004.

Reg. No. 3,134,833 for the mark RAVENS for clothing, namely aprons, shirts, T-shirts, and jackets, which was granted on August 29, 2006.

Reg. No. 3,153,731 for the Mark RAGIN' RAVEN for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat, which was granted on October 10, 2006.

Reg. No. 3,336,587 for the Mark RAGIN' RAVEN for wine, which was granted on November 13, 2007.

Reg. No. 3,457,923 for the Mark RAVENS WOOD for barbecue sauce, picante sauce, ready-made sauces, sauces, and sauces for barbecued meat which was granted on July 1, 2008.

The Ravenswood on-premises tasting room was opened in February of 1991 and has continually been open every week since then through the present date.

RAVENSWOOD branded merchandise, other than wine, has been sold at the Ravenswood visitor center/wine tasting room since the early 1980's. RAVENSWOOD branded merchandise includes (by way of example only) t-shirts, sweatshirts, polo shirts, bike shirts, baseball type caps, fleece jackets, denim jackets, silk scarves, watches, bumper stickers, Christmas tree ornaments, pepper grinders, totes, coasters, aprons, hand towels, pottery, glassware, etc. Opposer also sells food products at its Visitor Center, including without limitation, nuts, olive oil, barbeque sauces, tomato sauces, etc.

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Aprons:	On or about June 30, 1990 –continuous and current
Bandanas:	On or about June 30, 1990–continuous and current
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Tank tops:	On or about June 30, 1990–continuous and current
T-shirts:	On or about June 30, 1990–continuous and current
Sweatshirts:	On or about June 30, 1990–continuous and current

Opposer will also rely upon the relatedness of the parties respective products. In that regard, Opposer intends to rely upon, *inter alia*, the facts that there are numerous third party registrations and uses of marks for both beer and wine, that beer and wine are

advertised in the same publications, that beer and wine are distributed by the same persons, offered in the same establishments, and that beer and wine are often traditionally consumed together and offered together.

Further, Opposer assumes that the Board can take judicial notice that wine and beer are sold in the same establishments, including liquor stores, convenience stores, grocery stores, restaurants and the like.

Interrogatory No. 12: Identify all facts that support the allegation that “mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill,” as found in Paragraph 9 of Opposer’s Notice of Opposition.

Response: Opposer objects to Interrogatory No.9 as being, in part, violative of the attorney work product privilege. Opposer has not yet determined “all facts that support the allegations in paragraph 9 of Opposer’s Notice of Opposition,” and is under no obligation to provide such information. Additionally, the facts that support the allegation that “Since Opposer owns the Opposer’s Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill,” are myriad and the request is overly broad and unduly burdensome to comply with. Further, many of the facts concerning the relatedness of the parties respective goods involve attorney-work product and are therefore privileged. Accordingly, and without waiver of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer states:

Opposer produces its wines at its Ravenswood Winery and first began crushing grapes to make wine in 1976. Its first release of a wine bearing Opposer’s Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer’s Marks was on or about February 29, 1980. Opposer’s sales of wine bearing Opposer’s Marks have been continuous since 1978 through the present date. Opposer plans to continue such uses in the future.

The Ravenswood winery has been known as Ravenswood Winery since 1976. Ravenswood has maintained a website continuously from 1996 to the present date. Opposer uses, *inter alia*, the marks and names RAVENSWOOD, RAVENS WOOD and RAGIN RAVEN. Opposer owns the following U.S. trademark registrations:

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T-shirts:	On or about June 30, 1990—continuous and current
Sweatshirts:	On or about June 30, 1990—continuous and current

Opposer will also rely upon the relatedness of the parties' respective products. In that regard, Opposer intends to rely upon, *inter alia*, the facts that there are numerous third party registrations and uses of marks for both beer and wine, that beer and wine are advertised in the same publications, that beer and wine are distributed by the same persons, offered in the same establishments, and that beer and wine are often traditionally consumed together and offered together.

Further, Opposer assumes that the Board can take judicial notice that wine and beer are sold in the same establishments, including liquor stores, convenience stores, grocery stores, restaurants and the like.

Interrogatory No. 13: Identify all events of actual confusion between Opposer, Opposer's Marks and the goods they identify on one hand, and any product from any producer of beers (inclusive of Applicant) known to Opposer.

Response: Opposer objects to Interrogatory No. 13 as being ambiguous and unintelligible as to the term "events," and as such is incapable of being answered.

AS TO RESPONSES:

I, Stefanie Jackel have reviewed the responses set forth above and declare that they are true and correct to the best of my knowledge and belief.


Name: Stefanie Jackel
Title: Brand Manager, Ravenswood

AS TO OBJECTIONS ONLY:

Dated: August 27, 2008


Name: Linda Kurth
BAKER AND RANNELLS, PA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Responses to Applicant's Interrogatories, in re Franciscan Vineyards, Inc. v. BeauxKat Enterprises, LLC, was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 27th day of August, 2008, to the Attorney for Applicant at the following address:

Justin D. Park
Romero Park & Wiggins P.S.
155-108th Avenue NE, Suite 202
Bellevue, WA 98004

/Linda Kurth/
Linda Kurth

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



FRANCISCAN VINEYARDS, INC.,

Opposition No. 91181755

Opposer,

Mark: BLACK RAVEN BREWING
COMPANY

v.

Serial No. 77223446

BEAUXKAT ENTERPRISES, LLC

Filed: January 8, 2008

Applicant.

**OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR THE PRODUCTION
OF DOCUMENTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Opposer, Franciscan Vineyards, Inc., responds to the First Request for the Production of Documents and Things served by Applicant Beauxkat Enterprises, LLC ("Applicant") as follows:

Preliminary Statement

Each of the responses that follow, and every part thereof, are based upon and reflect the knowledge, information or belief of Opposer at the present state of this proceeding. Accordingly, Opposer reserves the right, without assuming the obligation, to supplement or amend these responses to reflect such other knowledge, information or belief which it may hereafter acquire or discover.

General Objections

1. The following general objections are incorporated by reference in Opposer's response to each and every Document Request below.
2. The specific responses set forth below are for the purposes of discovery only, and

Opposer neither waives nor intends to waive, but expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility or use at trial of any information, documents or writing produced, identified or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such response.

3. Opposer expressly reserves its right to rely, at any time including trial, upon subsequently discovered information or information omitted from the specific response set forth below as a result of mistake, oversight or inadvertences.

4. The specific responses set forth below are based upon Opposer's interpretation of the language used in the Document Requests, and Opposer reserves its right to amend or to supplement its response in the event Applicant asserts an interpretation that differs from Opposer's interpretation.

5. By making these responses, Opposer does not concede it is in possession of any information or documents responsive to any particular Interrogatory or Document Requests or that any response given is relevant to this action.

6. Opposer's failure to object to a particular Document Request or willingness to provide responsive information pursuant to a Document Request is not, and shall not be construed as, an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

7. Because Opposer may not have discovered all the information that is possibly within the scope of the Document Requests, Opposer expressly reserves its right to amend or to supplement these Responses and Objections with any additional information that emerges through discovery or otherwise.

8. Opposer objects to the Document Requests to the extent that they require the production of documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege or any other applicable privilege or immunities. Opposer responds to the Document Requests on the condition that the inadvertent response regarding information covered by such privilege, rule or doctrine does not waive any of Opposer's right to assert such privilege, rule or doctrine and the Opposer may withdraw any such response inadvertently made as soon as identified.

9. Opposer objects to the Document Requests to the extent that they seek proprietary, sensitive, or confidential commercial information or information made confidential by law or any agreement or that reflects trade secrets. Opposer responds to the Document Requests on the condition that the inadvertent responses regarding any proprietary, sensitive, or confidential information does not waive any of Opposer's rights and that Opposer may withdraw any such response inadvertently made as soon as identified.

10. Opposer objects to the Document Requests to the extent that they seek information that is not relevant to the subject matter of this action or reasonably calculated to lead to the discovery of admissible evidence.

11. Opposer objects to the Document Requests to the extent that they are vague, ambiguous and overbroad and therefore not susceptible to a response as propounded. To the extent that any request for documents requires Opposer to produce a sample of each different document used for any particular category, or to produce "all documents", Opposer objects to the same as being overly broad, overly burdensome, and beyond what is required of Opposer under the applicable rules. Accordingly, to the extent that Opposer agrees to produce documents in response to any such requests, such production shall be limited to

representative documents.

12. Opposer objects to the Document Requests to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

13. Opposer objects to the Document Requests to the extent that they require Opposer to undertake any investigation to ascertain information not presently within its possession, custody or control on the grounds of undue burden and because information from other sources are equally available to Applicant.

14. Opposer objects to the Document Requests to the extent that they require Opposer to undertake such an extensive review that such Document Requests are unduly burdensome and harassing.

15. Opposer objects to the Document Requests to the extent that Applicant seeks the residential addresses of individuals, on the grounds that disclosure of such information impinges on the privacy interest of such individuals.

16. Opposer objects to these Requests to the extent that they are not limited to use and registration of the marks in issue in the United States.

17. Opposer objects to the definition of “Identify” when used with reference to natural persons as being overly broad. Where natural persons are identified, they will be identified with sufficient information (if known) to enable Applicant to locate and contact such persons.

18. Opposer objects to the definition of “Identify” when used with reference to documents, as being overly broad. Where documents are identified, they will be identified with sufficient specificity to enable Applicant to request the same pursuant to a request for documents.

19. Opposer objects to the definition of “Opposer” to the extent it includes “predecessors”, “directors”, “officers”, “agents”, “employees”, “agents”, and “attorneys”. Opposer is under no obligation to serve each of the persons/entities referred to in the definition and Opposer is only obligated to produce information and documents under its possession or control.

20. Opposer objects to the definition of “Applicant” to the extent it includes “predecessors”, “directors”, “officers”, “agents”, “employees”, “agents”, and “attorneys”. Without such persons or entities being specifically identified to Opposer, the definition is incomprehensible. Opposer is under no obligation to investigate the identities of each such persons or entities prior to responding to the interrogatories.

21. Opposer objects to the Requests to the extent that they reference use or registration of an O2 formative Mark outside of the United States as having no bearing on the instant matter within the United States.

22. The production of documents and things requested will be made by email and first class mail.

RESPONSES TO REQUESTS

Request No 1.: Please produce copies of all uses of Opposer’s Marks as they have been and/or are used in commerce. Include (without limitation) copies of all newspapers, magazines, newsletters, Internet sites, trade journals published or distributed in the United States that mention or refer to Opposer’s Marks, as well as copies of all advertisements, labels, or other promotional materials used or planned to be used in the United States that use or mention or refer to Opposer’s Marks in any way.

Response: Opposer objects to Request No. 1 as Opposer is under no obligation to produce copies of “all” documents of any description. Opposer’s only obligation is to provide a representative sampling sufficient to meet Applicant’s needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974); Accordingly, and without wavier of any of the foregoing comments or objections, or the General Objections and Objections to Definitions and Instructions, Opposer refers to enclosed documents for representative documents.

Request No 2.: Please produce copies of all documents concerning any surveys ever conducted by or for Opposer concerning confusion or likelihood of confusion between Opposer, Opposer's Marks and/or any goods offered for sale under Opposer's Marks on the one hand, and any producer of beers (inclusive of Applicant) on the other hand.

Response:

Opposer is under no obligation to produce copies of "all" documents of any description. Opposer's only obligation is to provide a representative sampling sufficient to meet Applicant's needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974); Subject to and without waiving any objection, no responsive documents are known to exist at this time.

Request No. 3: For each expert whose opinion may be relied upon in this proceeding, produce each document which concerns: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid by to the witness; and (vi) any cases which the witness has testified at trial or by deposition.

Response:

Subject to and without waiving any objection, no responsive documents are known to exist at this time.

Request No. 4: Produce a copy of each business plan and a copy of each marketing plan created at any time that concerns the intended use of Opposer's Marks in the United States.

Response:

Subject to and without waiving any objection, no responsive documents are known to exist at this time.

Request No. 5: Produce documents sufficient to identify each (1) wholesaler, (2) distributor, and (3) retailer that has agreed to sell any goods bearing any of Opposer's Marks in the United States.

Response: Opposer is under no obligation to produce copies of "all" documents of any description. Opposer's only obligation is to provide a representative sampling sufficient to meet Applicant's needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974); Opposer has been in business for over 25 years and sells its wines at its winery, its website and through its distributors at

retail stores throughout the United States. Opposer manufactures and packages wines at its winery. Subject to and without waiving any objection, see enclosed documents.

Request No. 6: Produce all documents that concern Applicant that were reviewed or discussed by Opposer prior to filing the application in issue in this proceeding.

Response:

Subject to and without waiving any objection, no responsive documents are known to exist at this time.

Request No. 7: Produce all Documents concerning the geographic locations in which Opposer offers for sale and sells products using Opposer's Marks.

Response: Opposer objects to Request No. 7 as being overly broad and unduly burdensome. Opposer is under no obligation to produce copies of "all" documents of any description. Opposer's only obligation is to provide a representative sampling sufficient to meet Applicant's needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974); Opposer produces its wines at its Ravenswood Winery and first began crushing wine in 1976. Its first release of a wine bearing Opposer's Marks was on or about October 23, 1978, and its first release of a wine in interstate commerce bearing Opposer's Marks was on or about February 29, 1980. Opposer's sales of wine bearing Opposer's Marks has been continuous since 1978 through the present date. Opposer sells its wines to its distributors who in turn sell the wines to retail liquor stores, convenience stores, grocery stores, restaurants, bars and the like across the entire United States. Opposer also sells its wines on premises and through its wine club. For a list of Opposer's distributors in the United States, please see responsive documents.

Request No. 8: Produce all invoices, cancelled checks, or other Documents concerning Opposer's sale of products using Opposer's Marks in the United States.

Response: Opposer objects to Request No. 8 as being overly broad and unduly burdensome. Opposer is under no obligation to produce copies of "all" documents of any description. Opposer's only obligation is to provide a representative sampling sufficient to meet Applicant's needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974);); Subject to and without waiving any objection, see enclosed documents.

Request No. 9: Produce all Documents concerning all communications between Opposer, on the one hand, and any and all of Opposer's manufacturers, suppliers, wholesalers, distributors, and/or licensees, on the other hand, concerning products offered for sale using Opposer's Marks in the United States, including but not limited to,

Documents concerning Opposer's purchase of products or materials used in manufacturing, labeling, packaging, or distributing such products.

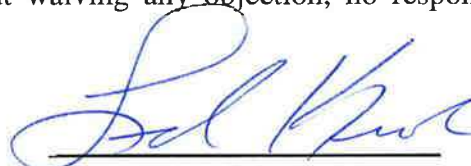
Response: Opposer objects to Request No. 9 as being overly broad and unduly burdensome. Opposer is under no obligation to produce copies of "all" documents of any description. Opposer's only obligation is to provide a representative sampling sufficient to meet Applicant's needs. See TBMP § 401.04; Mack Trucks, Inc. v. Monroe Auto Equipment Company, 181 USPQ 286 (TTAB 1974); Subject to and without waiving any objection, see enclosed documents.

Request No. 10: Produce all Documents concerning all communications between Opposer, on the one hand, and any individual or entity, on the other hand, concerning Applicant, Opposer's Marks, and/or Applicant's Mark.

Response: Opposer objects to Request No. 10 as being, in part, violative of the attorney work product privilege. Subject to and without waiving any objection, no responsive documents are known to exist at this time.

Dated: August 27, 2008

By:



Stephen L. Baker

Linda Kurth

BAKER and RANNELLS, PA

575 Route 28, Suite 102

Raritan, New Jersey 08869

(908) 722-5640

Attorneys for Opposer

Franciscan Vineyards, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Responses to Applicant's Request for Production of Documents, in re Franciscan Vineyards, Inc. v. BeauxKat Enterprises, LLC, was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 27th day of August, 2008, to the Attorney for Applicant at the following address:

Justin D. Park
Romero Park & Wiggins P.S.
155-108th Avenue NE, Suite 202
Bellevue, WA 98004

/Linda Kurth/
Linda Kurth